

PT 98-15

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

LESLIE-REDDICK POST #721)		
AMERICAN LEGION INC.)	Docket #	96-11-6
Applicant)		
)	Parcel Index #	13-22-08-102-001
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Frank Schweitzer, attorney for Leslie-Reddick Post #721 American Legion.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the "Department") Springfield, Illinois, on August 18, 1997, to determine whether or not Christian County Parcel Index No. 13-22-08-102-001 qualified for a property tax exemption for the 1996 assessment year.

Michael Porter, Michael Kerns, Jessee Jones, Kenneth Rosenthal, treasurer, and Richard Norris, commander of Leslie-Reddick Post 721 American Legion, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1996 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether this parcel was used by the applicant for exempt purposes during the 1996

assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant is a veteran's organization that owned the parcel during 1996. It is also determined that the applicant used the parcel in question during the 1996 assessment year for patriotic, charitable, and civic purposes. It is therefore recommended that Christian County Parcel Index Number 13-22-08-102-001 be granted a property tax exemption for the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Christian County Parcel Index Number 13-22-08-102-001 did not qualify for a property tax exemption for the 1996 assessment year was established by the admission into evidence of Department's Exhibits No. 1 - 5. (Tr. p. 10)

2. On February 20, 1997, the Department received a property tax exemption application from the Christian County Board of Review for Permanent Parcel Index Number 13-22-08-102-001. The applicant had submitted the request, and the board recommended that the Department grant the exemption for the 1996 assessment year. (Dept. Grp. Ex. Ex. No. 2)

3. On April 24, 1997, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Springfield, Illinois, on August 18, 1997, was pursuant to that request. (Dept. Ex. No. 5)

6. The applicant was formed under the National American Legion Constitution for:

God and Country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred percent Americanism; to preserve our memories and incidents of our association in the great wars; to inculcate a sense of individual obligation to the communities, State and nation; to

combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom, and democracy; to consecrate and sanctify our comradeship to our very devotion to mutual helpfulness. (Tr. p. 22)

7. The applicant acquired the parcel here in issue by a warranty deed dated January 14, 1981. (Dept. Grp. Ex. No. 2 p. 4)

8. The parcel in question is a 114 feet by 114 feet by 136 feet triangle that includes a single story building in which the applicant stores hospital equipment, approximately 300 cemetery flags, and supplies for various community groups. (Dept. Grp. Ex. No. 2 pp. 1, 3, & 10; Applicant's Ex. No. 3 pp. 1-10; Tr. p. 14-17)

9. The hospital equipment is loaned to anyone with a need for it, as long as they require it, at no charge. (Dept. Ex. No. 1 pp. 1, 3, 6-9; Applicant's Ex. No. 1; Tr. pp. 16, 23-24)

10. Most of the hospital equipment was donated to the applicant. If additional items were needed, the applicant purchased them. (Tr. p. 25)

11. The cemetery flags are put on the graves of veterans on Memorial Day. There is no charge made for the service. (Tr. pp. 16-17)

12. Examples of supplies stored for various community groups include Christmas decorations for the city for the Christmas In The Park program, float items for the Community Club parade, and 13 tables that the applicant loans to anyone that might need one. The items are loaned at no charge. (Tr. pp. 17-20)

13. The applicant does not request donations; however, occasionally it does receive donations for the use of its equipment. (Tr. p. 24)

14. The applicant's post building, where the applicant conducts its meetings, is on a parcel adjacent to the property. (Tr. p. 12)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

It is undisputed that the applicant is a veteran's organization. Therefore, the question before me is whether the applicant used the property in an exempt manner during the taxable year in question.

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 **ILCS** 200/15-145¹ was constitutional and that the provision granting an exemption to a veterans' organization required the organization's use to encompass all three of the required uses: civic, patriotic, and charitable. The Court went on to hold in that case that the applicant's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily

¹. AT THE TIME NORTHSHORE POST NO. 21 WAS DECIDED, THE EXEMPTION FOR VETERAN'S ORGANIZATIONS WAS FOUND AT ILL. REV. STAT. 1963, CHAP. 120, PARA. 500.18.

for members, necessitated a finding by the Court that the primary use of the property was not exempt.

The applicant, in the instant case, does not hold meetings or any other activities on the parcel in question. Rather, the area is used for storage of hospital equipment, cemetery flags, and supplies for various community groups. The Appellate Court determined that property owned by a church and used for the storage of church records and furniture qualified for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990), leave to appeal denied.

I find the use the applicant makes of the area in question very dissimilar to the applicant's social activities in North Shore Post No. 21.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization, and its use of property, is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

I find that the applicant satisfies the above six guidelines for charitable usage of the property in question when they loan the hospital equipment and other items to anyone in need.

To continue with the second of the requirements, the Court, in North Shore Post No. 21, failed to define what would be a civic use of property, and I have been unable to find Illinois case law that defines the term "civic". However, in C. I. R. v. Lake Forest, Inc., 305 F.2d 814 (1962), the United States Court of Appeals, Fourth Circuit, in regard to a requested exemption from income tax for a civic corporation, found that civic, citing the definition in the Oxford

English Dictionary, means "1. Of, pertaining, or proper to citizen. 2. Of or pertaining to a city, borough, or municipality. 3. Of or pertaining to citizenship." *id* at 817. This definition is consistent with Black's Law Dictionary which defines civic as "pertaining to a city, citizen, or to citizenship." While these definitions are not binding, I find them instructive and persuasive.

The applicant stores items used for the community parade and the Christmas In The Park program in the building on the parcel in question. It also loans tables that it stores there to various groups for community use. I therefore find that the applicant has fulfilled the civic prong of the test with the foregoing activities.

In order to satisfy the last of the requirements, namely the patriotic prong of the test, the applicant has established that it puts the flags stored on the property in the town for observance of Memorial Day and other patriotic holidays. It also places flags on graves of soldiers killed in various wars.

The applicant uses the property for charitable purposes when it loans the hospital equipment and other supplies, at no cost, to anyone else in need. The applicant fulfills the patriotic prong of the test by storing flags which are used for funerals and other observances of the military. The civic test is fulfilled by the loans of equipment the applicant does for community use. The applicant has shown that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I therefore recommend that Christian County Parcel Index Number 13-22-08-102-001 be granted a property tax exemption for the 1996 assessment year

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

February 3, 1998